N. VANGEDASELAM v. MAHADEVAN & ANOR.

[F.C. (Suffian L.P., Ali and Wan Suleiman F.JJ.) June 19, 1976]

[Alor Star — Federal Court Civil Appeal No. 123 of 1975]

Land Law — Caveat — Whether person who is interested only in a specific portion of land may enter a caveat against the land — National Land Code, ss. 322, 323, 324.

The appellant claimed an interest in a portion of a piece of land and he brought an action against the registered proprietor for an order of specific performance so that the portion may be transferred to him. He also entered a caveat against the land. On the death of the registered proprietor, his representatives applied to the court to have the caveat removed and the court ordered the caveat removed. The appellant appealed to the Federal Court.

Held, allowing the appeal: a person who claims an interest in a specific portion of land may caveat the whole land, provided the effect of his caveat is to cover only the particular interest claimed. In this case therefore the caveat should be restored pending the disposal of the civil suit, but the caveat should be so expressed as to prohibit any dealing in the land unless it is expressed to be subject to the claim of the caveator in the portion now occupied by him.

Woo Yok Wan v. *Loo Pek Chee*[2] and *Pak Kew Chai* v. *Yeoh Thian Seng & Anor.*[3] disapproved.

Cases referred to:—

(1) *Tee Chin Yung* v. *Ernest Jeff* [1963] M.L.J. 118.

(2) *Woo Yok Wan* v. *Loo Pek Chee* [1975] 1 M.L.J. 156.

(3) *Pok Kew Chai* v. *Yeoh Thian Seng & Anor.* [1975] 1 M.L.J. 220.

(4) *Inter-Continental Mining Co. Sdn. Bhd.* v. *Societe Des Etains de Bayas Tudjuh* [1974] 1 M.L.J. 145.

(5) *Registrar of Titles, Johore Bahru* v. *Temenggung Securities Ltd. & Anor.* [1976] 2 M.L.J. 44.

FEDERAL COURT.

Lim Kean Chye (*K. Kumarendran*) for the appellants.

M. Singaram for the respondents.

Suffian L.P.: This appeal raises the question whether a person who is interested only in a specific portion of land may enter a caveat against the land. The caveator (appellant before us) says yes, the caveatees (respondents) say no; the learned judge, agreeing with the caveatees decided no, and the caveator has appealed to us.

The facts are as follows. The late Mr. Ratnavale, no stranger to these courts, owned Merah Estate in Kulim, Kedah, which he planned to subdivide and sell to various people. The caveator and two others rendered him some service in connection with the project. In consideration of the caveator's service Mr. Ratnavale agreed to give him a specific portion of the estate with the tindal's house on it "now occupied by [the caveator]" and the caveator has been in possession of that portion ever since.

The agreement was expressed as a written undertaking dated December 22, 1966, in the following words:

"In the event of the satisfactory sale and completion of Merah Estate in Kulim, I [Ratnavale] hereby undertake to pay jointly

1. N. Vangedaselam of Kulim [the caveator]
2. S. Suppiah Chettiar of Bukit Mertajam
3. K. Nallamani Nadar of Kulim

for their services in the following manner:—

(a) Brokerage of 1% for their negotiating sale of the Sungei Dingi Division

(b) Brokerage of 2% for their effecting sale of the town lots

(c) 15% on the nett profits derived from the sale of the said estate.

The land comprising the tindal's house now occupied by N. Vangedaselam [caveator] will be given free to him.

Further it is understood by all concerned that if it were decided to retain the estate as a unit and not to dispose of it, a sum of $15,000 (Dollars fifteen thousand only) will be paid to them jointly.

Sgd. [Ratnavale]
December 22, 1966."

There must have been some dispute between Ratnavale and the caveator, for on September 29, 1971, the caveator filed a suit in the Alor Star High Court (Suit No. 263 of 1971) against Ratnavale. There the caveator asks among other things for an order of specific performance, so that the portion alleged to have been promised by Ratnavale to him may be transferred to him. That case has not yet come to trial.

On October 13, 1971, the caveator entered a caveat against the land.

Ratnavale died on April 9, 1973, but during his lifetime he had taken no action to remove the caveat. However after his death his two brothers, the representatives of his estate, applied to the court to have the caveat removed, and the court ordered the caveat removed, and it is against that order that the caveator has appealed.

The learned judge ordered the caveat removed on the ground that Merah Estate against which the caveat was entered was over 42 relongs in area, whereas the caveator claims a registrable interest only in a specific portion measuring about 18,000 square feet. The judge followed three decisions of the High Court, all of which decided that if you are interested only in a portion of land you cannot caveat the whole land. They are *Tee Chin Yong* v. *Ernest Jeff*;[1] *Woo Yok Wan* v. *Loo Pek Chee*;[2] and *Pok Kew Chai* v. *Yeoh Thian Seng & Anor.*[3] The first case was a decision on the F.M.S. Land Code, and the other two on the corresponding provisions in the National Land Code.

Here the land is in Kedah and at all relevant times the National Land Code applies.

In *Tee Chin Yong*[1] the caveatee had two pieces of land. According to the caveator, the caveatee had agreed to sell to him a portion of each piece, so he sued the caveatee for specific performance. Previously the caveator had lodged a caveat against each land. He was subsequently served with a notice requiring him to withdraw the caveats and he applied for an order that the caveats be extended until the disposal of his suit.

The caveatee opposed the application on the ground that agreements by the caveatee to sell the land did not give the caveator a caveatable interest, but Ismail Khan J., as he then was, ordered the caveats removed not on that ground, but on the ground that a person claiming a portion cannot caveat the whole land. He said at page 119:

"In my view, the question before me can be readily answered by determining whether or not a person claiming an interest in a specific portion of a piece of land — assuming without deciding whether his interest is a caveatable interest — is entitled under the Land Code to lodge a caveat over the whole of the land. It is quite clear that in respect of the remaining portion of the land he is not entitled to lodge any caveat whatsoever, I do not think that a caveat is divisible in the same way that certain clauses in a contract may in proper circumstances be severable from the rest. Therefore, if the caveats lodged by the plaintiff were partially invalid such invalidity renders those caveats wholly null and void and of no effect. They should not have been registered in the first place because the Registrar of Titles had no authority outside the four walls of the Land Code. In registering the caveats he was acting in a purely ministerial capacity and the mere fact of registration cannot validate what was invalid. I accordingly declare the two caveats to be void and of no effect."

With the deepest respect I do not agree that a person claiming only a portion cannot under the F.M.S. Land Code caveat the whole land.

The relevant provisions are sections 166, 167 and 169 which provided:

"166. . . . any person claiming title to or registrable interest in land may present a caveat to the effect that such land shall not be transferred, charged or leased by the proprietor either

(a) absolutely, or

(b) except in such manner and to such extent as in such caveat may be expressed, or

(c) until notice shall have been served on the caveator, or

(d) unless the transfer, charge, or lease be expressed to be subject to the claim of the caveator as expressed in such caveat, or

(e) except subject to any conditions expressed in such caveat."

"167. A caveat shall state the nature of the interest in the land and the ground upon which the claim is founded . . . and may be in the Form of Schedule XXXV."

"169. So long as any caveat shall remain in force the proper registering authority shall not register any memorandum of transfer, charge or lease executed by the proprietor of such land and presented subsequently to such caveat unless such memorandum shall be in accordance with the requirements of such caveat."

I am of the opinion that under the above provisions you either caveat the whole land or not at all, that you caveat the whole land even if you claim only a portion of it and that if you caveat the whole land but claim only part of it, then you should comply with paragraph (d) of section 166. Thus in the circumstances in *Tee Chin Yong* you should state that the lands shall not be transferred, charged or leased by the proprietor unless the transfer, charge or lease is expressed to be subject to the claim of the caveator as expressed in the caveats. This should not embarrass the registered proprietor unduly, because under section 169 the registering authority may register any memorandum of transfer etc. executed by the proprietor if it complies with the requirement of the caveat.

I now turn to the second case on which the learned judge relied, namely a decision of Ajaib Singh J. in *Woo Yok Wan* v. *Loo Pek Chee*.[2] There the caveatee owned a piece of land in Seremban town on which stood a shophouse. On April 1, 1964, the caveatee let the front portion of the ground floor and a room at the rear of the shophouse to the caveator, and the caveator entered into possession. On March 9, 1974, the Seremban Town Council served an order on the caveatee prohibiting any person from entering or remaining in the shophouse because it was a dangerous building. On April 10, 1974, the caveatee gave notice to the caveator terminating the tenancy. Meanwhile the caveatee had proceeded to sell the property to two joint purchasers in whose favour a transfer was executed on May 22, 1974. The caveator caveated the land on May 27, 1974, and on July 4, 1974, he brought a suit against the caveatee for specific performance of the tenancy agreement. On July 29, 1974, the caveatee applied to court to have the caveat removed. Ajaib Singh J. ordered the caveat to be removed. He said at page 159:

"With respect, I agree entirely with the decision in *Tee Chin Yong* v. *Ernest Jeff*. Under section 323 (2) of the National Land Code a person wishing to apply for the entry of a caveat has to do so in a prescribed form specifying therein the nature of his claim and whether the caveat is to be expressed to bind the land or a particular interest only. A person whose interest extends only to a specific portion of a piece of land is not entitled to enter a caveat over the whole of the land. The interest of the plaintiff [caveator] in the present case before me extended to only a portion of the land in Lot 947 and her entry of a caveat against the whole of the land was, therefore, null and void and of no effect. The agreement of April 1, 1964, did provide that the plaintiff [caveator], her employees, agents and customers shall have access to the rear portion of the premises and have the use of the kitchen, bathroom and lavatory but this privilege, in my view, did not amount to anything more than a mere licence which gave the plaintiff no right in the nature of an easement nor to any registrable interest of any kind under the provisions of the National Land Code. The Land Code provides for the entering of a private caveat to enable the caveator to protect his interest until his claim is adjudicated upon by the court. The entry of a caveat, nevertheless, is a blot on the title to the land concerned and the court will not permit that blot to be any larger than what the caveator is entitled to enter.

I, therefore, hold that the plaintiff whose claim is restricted to only a portion of the land is not entitled to enter a caveat over the whole of the land comprised in Lot 947 and I order that the caveat be removed forthwith."

In the third case, a decision of Hashim Yeop A. Sani J., *Pok Kew Chai* v. *Yeoh Thian Seng & Anor*.[3] a proprietor of land in Seremban on which stood a shophouse charged it to a person to secure a loan. Subsequently the proprietor leased the whole of the ground floor of the shophouse to the caveator. The chargee tried to coerce the caveator to leave the premises. The caveator caveated the whole land. The chargee applied to court to have the caveat removed. Hashim Yeop A. Sani J. ordered the caveat removed. He said at page 223:

"The next question for determination is whether the caveat lodged by the applicant is a valid one. As referred to earlier, the entry of the caveat was expressed to bind the whole of the land whereas in effect the interest of the applicant [caveator] was only in respect of the ground floor of the premises. The applicant also failed to particularise his interest in the application for entry of private caveat (same exhibit marked "YTS 5"). The agreement concerns only the ground floor of the premises as set out in the Statutory Declaration of the applicant required under section 323 (3) of the National Land Code (exhibit "YTS 6" in the affidavit of the first respondent).

It was held by Ismail Khan J. (as he then was) in the case of *Tee Chin Yong* v. *Ernest Jeff* that a person claiming an interest in a specific portion of a piece of land is not entitled to lodge a caveat over the whole of the land."

With the deepest respect I do not agree with Ajaib Singh J. or Hashim Yeop A. Sani J. on their construction of the National Land Code. I am of

the opinion that under that Code also, you either caveat the whole land or not at all, and that if you claim a registrable interest in a portion you may caveat the whole land, provided that you expressly limit the effect of your caveat to protect only your claim.

The relevant provisions of the National Land Code are: ...

"322. (1) A caveat under this section shall be known as a 'private caveat', and —

(a) may be entered by the Registrar on the register document of title to any land at the instance of any of the persons or bodies specified in section 323;

(b) shall have the effect specified in subsection (2) or (3), according as it is expressed to bind the land itself or merely a particular interest therein.

(2) The effect of any private caveat expressed to bind the land itself shall, subject to subsections (4) and (5), be to prohibit so long as it continues in force the registration, endorsement or entry on the register document of title thereto of —

(a) any instrument of dealing executed by or on behalf of the proprietor thereof, and any certificate of sale relating thereto;

(b) any claim to the benefit of any tenancy exempt from registration granted by the said proprietor, and

(c) any lien-holder's caveat in respect thereof.

(3) The effect of any private caveat expressed to bind a particular interest only shall, subject to sub-sections (4) and (5), be to prohibit the registration, endorsement or entry on the register document of title of —

(a) any instrument of dealing directly affecting that interest (including any certificate of sale relating thereto); and

(b) where that interest is a lease or sub-lease —

(i) any claim to the benefit of any tenancy exempt from registration granted directly thereout, and

(ii) any lien-holder's caveat in respect thereof.

(4) A private caveat shall not prohibit the registration, endorsement or entry of any instrument, claim or lien-holder's caveat where the instrument was presented, or the application for endorsement or entry received, prior to the time from which the private caveat takes effect.

(5) A private caveat shall not prohibit the registration or endorsement of any instrument or claim where —

(a) the instrument was presented or the application for endorsement made by the person or body at whose instance the caveat was entered; or

(b) the said instrument or application was accompanied by the consent in writing of that person or body to its registration or, as the case may be, to the making of the endorsement.

(6) Where the registration of any instrument, or the endorsement or entry of any claim or lien-holder's caveat is prohibited by any private caveat, the Registrar shall reject the instrument or, as the case may be, application for endorsement or entry."

"323. (1) The persons and bodies at whose instance a private caveat may be entered are —

(a) any person or body claiming title to, or any registrable interest in, any alienated land or any right to such title or interest;

(b) any person or body claiming to be beneficially entitled under any trust affecting any such land or interest; and

(c) the guardian or next friend of any minor claiming to be entitled as mentioned in paragraph (b).

(2) Any such person or body wishing to apply for the entry of such a caveat shall do so in Form 19B, specifying therein the nature of the claim on which his application is based, and whether the caveat is to be expressed to bind the land itself or a particular interest only.

(3) Any application under this section shall be accompanied by the prescribed fee and, so far as it sets out the claim giving rise thereto, be verified by a statutory declaration by the applicant or his advocate and solicitor."

"324. (2) The entry of any private caveat shall be effected by the endorsement on the register document of title, under the hand and seal of the Registrar, of the words 'Private Caveat', together with a statement specifying —

(a) whether the caveat binds the land itself, or a particular interest therein only;

(b) the person or body on whose application it was entered;

(c) the time from which it is effective (being the time of receipt of the application, as noted thereon pursuant to sub-section (1)); and

(d) the reference under which the application is filed.

(3) As soon as may be after the entry of any such caveat, the Registrar shall serve a notification in Form 19A upon the proprietor of the land bound thereby or, in the case of a caveat binding a particular interest only, upon the person or body in whom that interest is for the time being vested."

With respect, my construction of these provisions of the National Land Code is as follows. A person who claims a registrable interest in land wishes to enter a private caveat. He must according to subsection (2) of section 323 apply by Form 19B. In that form (verified by a statutory declaration) he must specify the nature of the claim on which his application is based and whether the caveat is to be expressed to bind the land itself or *a particular interest only*. This means that if the registrable interest he claims relates to the whole land he should say so. With reference to the words italicized, in view of the phrase "upon the person ... in whom that interest is for the time being vested" in subsection (3) of section 324, I think they mean the particular interest of the registered proprietor, not as Ajaib Singh J. seemed to think, the particular interest of the caveator. In the ordinary case a proprietor owns all the interest in his land, but this interest is divisible; thus in the instant case the caveatees owned (a) all the interest in Merah Estate excluding the portion claimed by the caveator, as well as (b) all the interest in that portion. The caveator, as it happens, claims not the caveatees' interest in the entire estate, but only his interest in the portion in question. In other words he claims a particular interest in the land. In that event when applying for entry of a caveat he should so state in Form 19B in paragraph 1, and in paragraph 2 he should give the grounds of his claim. (He should not claim a caveat to be expressed to bind the land itself.) He should also cause to be inserted in Form 19A a description of the particular interest claimed and a description of the effect of the caveat.

Thus in the instant case the caveator might have said in Form 19B that he applied for the entry of a caveat upon the title to Merah Estate, to be expressed to bind the particular interest described in the Schedule (the description to read something like this "title to, or a registrable interest in or a right to title or interest, in that portion approximately 18,000 sq. ft. in area comprising the tindal's house now occupied by the caveator") on the ground that the deceased Mr. Ratnavale had by written agreement dated December 22, 1966, undertaken in consideration for service rendered to give that portion free to the caveator; and the caveator could have caused to be inserted in Form 19A a description of the effect of the caveat reading something on the following lines, "the effect thereof is that the land shall not be transferred, charged or leased by the proprietor unless the transfer, charge

or lease is expressed to be subject to the claim of the caveator to the particular interest described."

It is important to remember that a caveat is not final and conclusive, that it is like an interim injunction and its purpose is only to preserve the *status quo* pending the taking of steps by the caveator to enforce his claim to an interest in the land by proceedings in the courts.

Hashim Yeop A. Sani J. quoted a passage from page 343 of *S.K. Das* on the Torrens System in Malaya in support of the proposition that if you claim only a portion you cannot caveat the whole land. That passage is part of a longer passage which reads:

"The caveat must state the nature of the interest in the land and the grounds upon which the claim is founded; mere general words are not sufficient. It must not be larger in its terms than the claim warrants and the caveat may fail because it does not sufficiently state the *quantum* of the estate or interest claimed by the caveator....

The caveator must limit this prohibition of his caveat to such dealings as his claim, if well founded, entitles him to forbid, or run the risk of paying the costs of an application to have the caveat removed and of having damages recovered against him."

The learned author in footnotes refers to several Australian and New Zealand cases which unfortunately are not available here, but that notwithstanding I see nothing in the above passage saying or implying that if you claim a registrable interest in only a portion you cannot caveat the whole land. On the contrary the above passage would in my humble opinion support my view that you can do so, provided when applying for the caveat you state the nature of the registrable interest you claim, you do not use mere general words, you do not claim more than what is warranted, the caveat sufficiently states the *quantum* of the estate or interest which you claim, and you limit the prohibition of your caveat to such dealings as your claim, if well founded, entitles you to forbid.

As regards the question whether the caveator has any caveatable interest, it is to be noted from paragraph (a) of subsection (1) of section 323 that among the persons at whose instance a private caveat may be entered is not only a person claiming title to, or any registrable interest in land, but also a person claiming a *right* to title to or registrable interest in land. At the moment the caveator here has no registrable interest in the land, but it may well be that after the merit of his claim has been tried the court may conclude that he has a right that the undertaking given to him by Mr. Ratnavale should be enforced (see *Inter-Continental Mining Co. Sdn. Bhd.*[4]), in which case the court may order specific performance, *i.e.*, order the representatives of Ratnavale's estate or their successors in title to subdivide, and give a separate and registrable title to the portion claimed. In view of this, I would say that as the caveator has a right to title to the land, he has a caveatable interest.

I would therefore allow this appeal. The respondents to pay costs here and below. The appellant's deposit to be refunded to him.

As regards the question whether or not we should order the registration of the caveat, we were told by counsel for the caveatees that since the judgment appealed from the caveat has been removed and Merah Estate has been sold, but the purchasers had notice of the caveator's claim. I think that the fairest thing to do in the circumstances is to order the restoration of the caveat and that I accordingly do, pending disposal of Alor Star High Court Civil Suit No. 263 of 1971, but the caveat to be so expressed as to prohibit any dealing in the land unless it is expressed to be subject to the claim of the caveator in that portion approximately 18,000 sq. ft. in area comprising the tindal's house now occupied by the caveator.

Since writing the above, I have seen the advice of the Privy Council in *Registrar of Titles, Johore, Johore Bahru* v. *Temenggong Securities Ltd. & Anor.*[5] delivered on April 27, 1976, and I am convinced that my view is correct, that a person who claims an interest in a specific portion may caveat the whole land, provided that he limits the effect of his caveat to cover only the particular interest claimed.

Ali and **Wan Suleiman F.JJ.** concurred.

Appeal allowed.

Solicitors: *Kumar, Chan & Chia; Khong & Son.*

BRITISH INDIA GENERAL INSURANCE CO. LTD v. DOLLAH SAHARI & ANOR.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) June 16, 1976]

[Kuching — Federal Court Civil Appeal No. 138 of 1975]

Insurance — Motor Insurance — Whether insurers liable to satisfy judgment obtained against insured — Motor Vehicles (Third Party Risks) Ordinance (Sarawak Cap. 130), s. 9.

In this case the 2nd defendant had obtained damages against the 1st defendant arising out of an accident in which the 1st defendant's motor vehicle was involved in an accident with a scooter ridden by the 2nd defendant. The plaintiff brought the action for a declaration that it was entitled to avoid the policy. The 2nd defendant counterclaimed for a declaration that the plaintiff was obliged to satisfy the judgment obtained by him. The learned trial judge ruled that the onus was on the plaintiff to prove on a balance of probability that the car was being driven by a learner-driver and held that the plaintiff had failed to discharge the burden. He therefore dismissed the plaintiff's claim but he declined to make the declaration in favour of the 2nd defendant. The plaintiff appealed and the 2nd defendant cross-appealed.

Held: (1) the court could not interfere with the finding of fact by the trial judge and therefore the appeal of the plaintiff should be dismissed;

(2) in this case as the 2nd defendant had obtained judgment in the case against the 1st defendant, he was entitled to a declaration that the plaintiff should satisfy the judgment.

FEDERAL COURT.

C.E. Lee for the appellant.

Daniel Tajem for the 1st respondent.

T.O. Thomas for the 2nd respondent.

Suffian L.P. (delivering the judgment of the Court): The 1st defendant (1st respondent before us) has three cars: a taxi, a car used for teaching learner-drivers and a private car. Here we are concerned only with his private car No. KA 6219.